

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

NANCY E. LEWEN

Plaintiff,

v.

Civil Action No. 10-1273

THE HONORABLE SANDRA  
EDWARDS STEPHENS, *individually*  
*and in her official capacity as Judge of*  
*the Fifth Judicial Circuit Court*, DAVID  
ELLSPERMANN, *Clerk of Court*,  
STATE OF FLORIDA, *Department of*  
*Revenue – Central Child Support*  
*Disbursement Unit*, GARY M.  
FINNEGAN and ANNE RADUNS, PA

Defendants.

**ORDER**

AND NOW, this 27th day of January, 2011, it appears that plaintiff Nancy E. Lewen (“plaintiff”) filed the complaint in the above captioned case on September 30, 2010. (ECF No. 2.)

Whether a court has the power to hear a case must be addressed at the earliest possible stage of the proceedings. See Mansfield, C. & L.M.R. Ry. Co. v. Swan, 111 U.S. 379, 384 (whether a federal court has subject matter jurisdiction should be raised *sua sponte* by the court); FED. R. CIV. P. 12(h)(3) (“If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.”); S. Cross Overseas Agencies, Inc. v. Wah Kwong Shipping Grp. Ltd., 181 F.3d 410, 414 n.2 (3d Cir. 1999) (“Diversity is to be determined at the time the complaint is filed.”). Plaintiff brings suit against defendants who are located in Florida. To maintain diversity jurisdiction under 28 U.S.C. § 1332 in the United States District

Court for the Western District of Pennsylvania, plaintiff must establish that she is domiciled in Pennsylvania. Frett-Smith v. Vanterpool, 511 F.3d 396, 400 n.6 (3d Cir. 2008) (“[D]iversity jurisdiction may be properly invoked only when a dual citizen’s domicile, and thus his citizenship, is in a state diverse from that of adverse parties.”).

One’s domicile is their “true, fixed, and permanent home and place of habitation. It is the place to which, whenever he is absent, he has the intention of returning.” McCann v. Newman Irrevocable Trust, 458 F.3d 281, 286 (3d Cir. 2006). A plaintiff establishes domicile by their physical presence in a state with an intent to remain there indefinitely. Vanterpool, 511 F.3d at 401. A court may consider a party’s “establishment of a home, place of employment, location of assets, registration of a car, and generally, the center of one’s business, domestic, social and civic life” to determine whether domicile exists in a particular state. Id.

In support of domicile in this district, plaintiff asserts in her filings with the court that (1) she has been a legal resident of Pennsylvania since 1999; (2) she is the owner of property in Stoneboro, PA; (3) her Pennsylvania driver’s license lists the Stoneboro address; (4) her adult daughter lives at the Stoneboro residence; and (5) plaintiff may receive mail at the Stoneboro address. (Pl.’s Notice of Legal Residency (ECF No. 4) at 1.) Plaintiff, however, admits that she currently lives in Ontario, Canada, applied for legal residency status in Canada, and her mailing address in Canada is the more appropriate address to send notice with respect to court filings in this case. (Id.)

“[A]n American national, living abroad, cannot sue or be sued in federal court under § 1332(a)(2).” Vanterpool, 511 F.3d at 400. In other words, only if a plaintiff was domiciled in a particular state of the United States at the time the suit was filed, and that state was diverse from that of the defendants, would subject matter jurisdiction be present. Id. (holding the plaintiff, an

American national, did not satisfy diversity jurisdiction when she was domiciled abroad at the time the complaint was filed because she was not a citizen of any state).

Therefore, IT IS HEREBY ORDERED that plaintiff shall show cause by February 17, 2011, why this case should not be dismissed for lack of subject matter jurisdiction.

IT IS FURTHER ORDERED that failure to file a response will be construed by the court as plaintiff's consent to the dismissal of this action for failure to prosecute.

/s/ JOY FLOWERS CONTI  
Joy Flowers Conti  
United States District Judge